



HARVARD LAW SCHOOL

Center on the Legal Profession

“Lawyers as Professionals and as Citizens: Key Roles and Responsibilities in the 21st Century” Commentary

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Comments of Steve Rodgers, Senior Vice President & General Counsel of Intel Corporation, on “Lawyers as Professionals and as Citizens: Key Roles and Responsibilities in the 21st Century”

It’s an honor to comment on the essay by Ben Heineman, Bill Lee, and David Wilkins on “Lawyers as Professionals and as Citizens.” From my perspective as Intel’s General Counsel, the essay efficiently and wisely lays out the major issues that large corporate law departments should consider in evaluating and executing their key ethical responsibilities. Our customers and business partners, our employees and stakeholders, the legal system and society at large all count on in-house law departments to guide their corporations to do what’s right, and not just what’s legal--in the essay’s words, “to fuse high performance with high integrity.” The essay is an important step in inspiring the discussions and debates that will help achieve that goal.

But as important as the ethical issues raised in the essay are, my comments focus on one of the essay’s more pragmatic “how to” discussions. In particular, the essay (at 45-46) uses Intel’s preferred counsel program as a pragmatic example of how law firms can push corporate law departments to fulfill their responsibilities while at the same time enabling the firms to achieve a long-term (rather than merely transactional) relationship with the companies they represent. The essay does a good job describing the basic elements of Intel’s preferred counsel program. But with all the great law firms that in-house counsel may choose from, the reader may wonder what are the distinguishing qualities of the firms that gain entry into preferred counsel programs such as Intel’s. That is the subject of these comments. Without attempting to be exhaustive (and without

attempting to speak for other corporate law departments), here are ten qualities that Intel expects in its preferred counsel firms.

First, firms must recognize that it is not enough to offer smart and talented lawyers. Even for the most sophisticated litigation and transaction matters, the talent pool is usually deep and spread across multiple firms. Lawyering excellence is necessary, but far from sufficient.

Second, firms must be prepared to sacrifice short-term economic gain for the benefits of a long-term relationship. Of course, we want our outside counsel to succeed financially--they cannot thrive for long without profit. But likewise, firms cannot become our trusted advisers or win our loyalty if immediate dollars are their sole motive.

What does this mean? Some examples:

- Take the time to learn about our business model, our products, our processes, and our people, even when that time is not billable. Outside counsel teams with this sort of institutional knowledge are invaluable.
- Staff matters adequately to meet their needs. But don't send three lawyers to a meeting, conference call, or deposition when fewer will do. Thoughtlessly adding more lawyers to tasks only diffuses responsibility and spawns inefficiency. For the same reason, "revolving door" staffing must be avoided. The people who run our business strive for efficiency and velocity. They expect their lawyers--both in-house and outside counsel--to do the same.

- Recognize that our finance department does not give the legal department a blank check. We have budgets to meet and are held accountable when we exceed them. So too, when firms exceed the budget they give to us without advance notice and good cause, they must be prepared to write off time.
- Look for opportunities to enhance our trust and reliance on the firm, even if no invoice is to follow. Offer continued legal education to our lawyers and staff on topics that matter to their work. Tell us about noteworthy legal, regulatory, and other developments--not via generic marketing material, but in a way that is timely and tailored to the issues we face.

Third, lead outside counsel on Intel matters must really lead. We expect lead lawyers to roll up their sleeves. In conjunction with our internal team leaders, lead outside counsel must establish the matter strategy. They must know the key documents inside and out. In litigation, they must identify early on the winning themes--and be prepared to adjust as new facts are learned. Sure, lead lawyers will work with lieutenants and other junior lawyers as appropriate. But no event of any significance in the matter should occur without the lead's input and guidance. Indeed, when I was an Intel in-house team leader reviewing invoices, the first thing I noticed was the number of hours recorded by the lead outside counsel. I drew comfort if the lead recorded the most hours. I grew concerned when their hours were low.

Fourth, we expect outside counsel to staff each matter with the right team, and we demand quality performance from every team member, top to bottom. As important as the lead lawyer is, matters can fail if anyone on the team fails--if a critical term is omitted from a contract, if a key document is overlooked in document review, if a privileged communication is sent to an adversary, if an important legal authority is ignored. That is why we expect outside counsel teams on each matter to consist only of lawyers and staff of exceptional quality at all levels. We hold the lead outside counsel responsible for ensuring that each member of the team lives up to this standard of excellence and contributes value commensurate with his or her level.

Fifth, we expect our preferred outside counsel to form a core team to staff matters on a recurring basis. We invest in team members so that they can handle not only today's deal or lawsuit, but future matters as well. Whether in litigation or transactions, we expect staffing commonality and continuity. Outside counsel teams with previous Intel experience hit the ground running when the next matter comes. They already understand our technology. They know the company insiders who will be the key players, and they know how to approach them without unduly burdening their time. They understand the acronym-filled and sometimes arcane language we speak. They understand how the matter fits or may affect our business strategy and the stakes for the company. They are sensitive to how the position we take in one matter may have ripple effects on--or be dangerously inconsistent with--our position in other matters.

Sixth, our outside counsel must respect and collaborate with our legal department, and recognize that the in-house team leader owns the matter. Ultimately, the legal department is responsible for the success or failure of our matters and the quality and integrity of our advice. Our business leaders hold us accountable for results, good or bad. To fulfill our responsibilities, we have assembled a bright, talented, and engaged group of in-house lawyers and other professionals. They must approve all important decisions and actions, and they need to be kept informed, consulted on key events, and given an opportunity to review, edit and approve all significant documents that may be sent outside the company--whether they be drafts of contracts, discovery documents, or legal briefs.

Seventh, outside counsel must produce world-class written work, every time. Clear, concise, thoughtful, and persuasive writing is the signature of our legal department. To measure up, drafts sent to in-house team leaders for review should be essentially ready to file or send to the other side. A sure way to frustrate in-house lawyers is to send them drafts that require them to spend their nights or weekends redoing outside counsel's work. Worse still is to send them inadequate drafts after the internal deadline.

Eighth, we insist that outside counsel, like everyone in the legal department, act ethically and professionally at all times--no exceptions. By their own good conduct they must protect Intel's name, reputation, and credibility, and they must avoid conflicts of interest.

Ninth, outside counsel must have the courage to give us their views of what is legal, right, and wise even if those views will be controversial. The job of a trusted adviser is to speak up. We expect their counsel even if we may ultimately disagree with their advice.

Tenth, we expect firms in our preferred counsel program to designate a senior partner, respected within the firm, to lead the overall client relationship. Along with the matter-specific lead outside counsel, we count on this relationship partner to ensure that members of each team understand Intel's expectations and that the firm does what it needs to do to provide Intel world-class representation. This is the partner with whom we exchange regular and candid feedback and with whom we discuss ways to grow and improve our relationship even further.

Our preferred counsel have learned these ten lessons and more. In so doing, they have earned our trust and respect. And with that trust and respect comes our shared investment in the relationship, and reciprocal willingness to give up short-term gains for long-term success. We host various programs, including programs attended by company leaders, to educate our preferred counsel about our business developments and strategy. We give their "up and comers" significant responsibility and professional opportunities, and the chance to develop close relationships within the legal department and with those we serve in the corporation. We join our preferred counsel in bar, pro bono, and civic activities. And we give them a steady stream of our work. They have become our long-term partners on the path to meeting our business needs and ethical responsibilities.



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